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In the Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1222

CHARLES L. WOLFF, JR., Warden, Nebraska Penal and Correctional Complex,

Appellant,

-vs-

DAVID L. RICE,

Appellee.

ON WRIT OF CERTIORARI

MOTION OF THE ATTORNEY GENERAL OF THE STATE OF UTAH FOR PERMISSION TO FILE A BRIEF AMICUS CURIAE AND BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF UTAH, AMICUS CURIAE.

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MOTION OF THE ATTORNEY GENERAL OF THE STATE OF UTAH FOR PERMISSION TO FILE A BRIEF AMICUS CURIAE

Comes now the State of Utah, by and through its authorized representative, Vernon B. Romney, Attorney General, State of Utah, and hereby moves this Honorable Court for permission to file the following Brief Amicus Curiae pursuant to Rule 35, Supreme Court of the

United States Revised Rules, as amended, January 15, 1974. Said motion is based upon the fact that the State of Utah has an interest in the outcome of this case.

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BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF UTAH, AMICUS CURIAE

INTEREST OF AMICI

Among its several issues, *Wolff v. Rice,* No. 74-1222, presents to this Court the question of whether the exclusionary rule should be abolished or at least substantially modified in cases where it would have little or no deterrent effect. An adverse decision would continue the detri-

mental impact which the rule has had on criminal justice since its inception. The State of Utah respectfully submits its suggestions for change to this Honorable Court.

STATEMENT OF THE CASE

The following facts were taken from *Rice v. Wolff*, 513 F.2d 1280 (1975), the Court of Appeals, Eighth Circuit decision.

On August 17, 1970, two police officers were sent by the police dispatcher to an Omaha address where a woman was reportedly screaming. The house at the address was vacant. A booby-trap, consisting of dynamite, in a suitcase, was placed near the front door and when one officer, Larry Minard, tripped the detonating device, an explosion killed him instantly. By the 22nd of August, the investigation of the bombing had focused on one Duane Peak. Several persons had identified Peak as the individual who had reported to the police dispatcher that a woman was screaming. Also several people had seen Peak, prior to the murder, with a suitcase similar to the one used in the bombing. A warrant was issued for the arrest of Peak and the police sought him at various addresses where it was thought he might be hiding. That night the police came to the home of appellee David Rice. Lights and a television were on in the house, but there was no response to the officer's knock. The officers decided not to forcibly enter but to first acquire a valid search warrant. An affidavit was made and a municiple court judge issued a search wrrant. When the police returned to Rice's home they entered and found, in plain view, fourteen sticks of dynamite, blasting caps, wire, a battery,

and a pair of long nosed pliers. Later, Rice was arrested. At trial Rice moved the state trial court to suppress the various items seized by police. The trial court denied the motion to suppress, ruling that the search was legal pursuant to a valid search warrant. Rice was convicted and sentenced to life imprisonment. The primary attack by Rice on appeal to the Supreme Court of Nebraska was upon the trial court's refusel to suppress. However, the Nebraska Supreme Court affirmed the conviction and ruled that the search warrant was valid and the search legal.

A petition for a writ of habeas corpus was filed in federal district court and the court there declared that the affidavit in support of the search warrant was fatally defective, 388 F.Supp. 185 (D. Neb. 1974). The United States Court of Appeals, Eighth Circuit, affirmed the district court ruling, 513 F.2d 1280 (1975).

This Court granted certiorari, June 30, 1975, *Wolff v. Rice*, No. 74-1222.

ARGUMENT

POINT I

THE EXCLUSIONARY RULE SHOULD BE ABOLISHED.

A. THE EXCLUSIONARY RULE, AS ESTABLISHED BY *WEEKS* AND *MAPP* IS BASED ON FAULTY REASONING, IS NOT CONSTITUTIONALLY MANDATED, AND IS UNJUSTIFIED BY THOSE DECISIONS.

In *Weeks v. United States,* 232 U.S. 383 (1914), the Supreme Court ruled that any evidence obtained in violation of the Fourth Amendment would be inadmissible in federal courts. Forty-seven years later, in *Mapp v. Ohio,* 367 U.S. 643 (1961), this exclusionary rule was also imposed on state courts. The Court's decision in *Weeks, supra,* was based on the following premises: (1) courts are entrusted with the responsibility of giving the Fourth Amendment force and effect; (2) courts should not condone illegal conduct; and (3) the Fourth Amendment has no meaning without the exclusionary rule, 232 U.S. at 392, 394. The Court in *Mapp, supra,* concluded that the exclusionary rule should be forced onto the states for much the same reasons but also because (1) the rule is of constitutional dimension; (2) some states have adopted the exclusionary rule; (3) the right to privacy is as important as any other constitutional right; (4) federal-state law enforcement cooperation will be enhanced; and (5) although criminals may go free, it is the law that sets them free, 367 U.S. at 647-659.

If the above listed premises and reasons are carefully examined it is apparent that the exclusionary rule is neither a dictate of logic nor a constitutional mandate. Therefore, the rule, as an imperative, remains unsupported by the very decisions which generated its existence.

Weeks v. United States, supra, decided in 1914, is generally known as the origin of the exclusionary rule. Quoting from that case:

> "The case in the aspect in which we are dealing with it involves the right of the court

> in a criminal prosecution to retain for the purposes of evidence the letters and correspondence of the accused, seized in his house in his absence and without his authority. . . ." 232 U.S. at 393.
>
> "We therefore reach the conclusion that the letters in question were taken from the house of the accused . . . in direct violation of the constitutional rights of the defendant. . . . In holding them and permitting their use upon the trial, we think prejudicial error was committed." *Id.* at 398.

What was the basis for this conclusion, and subsequent decision, which was such a great departure from the common law, *Olmstead v. United States,* 277 U.S. 438 at 463 and 468 (1928), and from the law in almost every state? (*Wolf v. Colorado,* 338 U.S. 25 at 29 (1949), only one state, prior to *Weeks* had an exclusionary rule, *id.*). One of the major premises upon which the *Weeks* Court relied is that:

> "The effect of the 4th Amendment is to put the courts of the United States and federal officials . . . under limitations and restraints as to the exercise of [their] power . . . This protection reaches all alike, whether accused *of* crime or not, and the duty of giving [the 4th Amendment] force and effect is obligatory upon all intrusted under our Federal System with the enforce of the laws." 232 U.S. at 391-392.

However, from the above premise, it does not follow that evidence must be excluded which is otherwise credible and helpful in determining factual issues. Certainly the Fourth

Amendment places limitations on the powers of the courts. Courts are responsible for judging the constitutionality of laws and may not declare a law constitutional if it would allow the seizure of personal property in an unreasonable manner. Also the courts are restrained from issuing warrants without probable cause. It is just as certain that "this protection reaches all alike." Furthermore, courts do have the duty of giving "force and effect" to the Fourth Amendment. If a law enforcement officer is brought before the court and found to be guilty of the violation of a citizen's Fourth Amendment rights, that court has the responsibility of prescribing a punishment which will deter that officer from doing the same in the future. However, all of the above restraints and responsibilities admitted, the court need not give the Fourth Amendment "force and effect" by closing its eyes to reliable creditable evidence. The exclusionary rule is not required by the Fourth Amendment.

In another place the *Weeks* Court used the premise that courts should not "sanction" illegal searches and seizures and:

> "To sanction such proceedings would be to affirm by judicial decision a manifest neglect, if not an open defiance, of the prohibitions of the Constitution." 232 U.S. at 394.

While it is perfectly true that to sanction illegal conduct would be to defy the constitution, that does not lead to the conclusion that a court which does not use the exclusionary rule is sanctioning illegal conduct. In other words, a court is not sanctioning murder because it allows a convicted murderer to testify against his accomplice. A court could demonstrate its disapproval for violators of the Fourth Amendment by the use of fines and jail sentences of by alternative methods.

The *Weeks* Court sought to justify the exclusionary rule by one other argument:

> "If letters and private documents can thus be [illegally] seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment . . . is of no value and . . . might as well be stricken from the constitution." 232 U.S. at 393.

The above statement would be comparable to saying that if every convicted criminal is not sentenced to life imprisonment, then laws have no meaning. Both statements are simply not true. The Supreme Court itself noted that:

> "But the ways of enforcing [the 4th Amendment] raise questions of a different order. How such arbitrary conduct should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions that are not to be so dogmatically answered as to preclude the varying solutions which spring from an allowable range of judgment on issues not susceptible of quantitative solution." *Wolf v. Colorado,* 338 U.S. at 28 (overturned by *Mapp v. Ohio*).

The Fourth Amendment can survive without the exclusionary rule and in fact would be a much more positive force in our society without it.

As is evident from the argument above, it is the State of Utah's opinion that the *Weeks* decision is replete with faulty conclusions.

Mapp v. Ohio, supra, decided in 1961, extended the exclusionary rule to state courts. This was done although the majority of state courts expressly rejected the *Weeks* exclusionary doctrine. (The Supreme Court pointed out that as of 1960, almost a half century after *Weeks*, only 44 percent of the states (22 of 50) were for total exclusion of evidence. *Elkins v. United States,* 364 U.S. 206, appendix table I at 224-225.) The *Mapp* decision, an extensive reach of power by the Court, hopefully represents the apex of the pendulum swing in the direction of the exclusionary rule. Later cases have not extended the doctrine but have, rather, realized the shortcomings of the rule. For example, see *Terry v. Ohio,* 392 U.S. 1 (1968), wherein the Court said:

> " . . . a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime." 392 U.S. at 15.

See also *United States v. Calandra,* 414 1 U.S. 338 (1974), and *Michigan v. Tucker,* 417 U.S. 433, 41 L.Ed.2d 182 (1974).

As the reasoning and logic of the *Mapp* majority opinion is examined, it becomes apparent that the court had little if any solid foundation for the action taken. The majority opinion begins with a short history of the exclu-

sionary rule, including a brief review of the *Weeks* decision, with small quotes from *Wolf v. Colorado, supra,* and *Silverthorne Lumber Co. v. United States,* 251 U.S. 385 (1920). Much material is quoted out of context, however, and the overall effect is a twisting of words, producing the desired result. At 367 U.S. 648 the majority said:

> "Finally, the court in [Weeks] clearly stated that the use of the seized evidence involved 'a denial of the constitutional rights of the accused.' "

What the Court in *Weeks* actually said was:

> " . . . [the defendant] having made a reasonable application for their return, which was heard and passed upon by the court, *there was involved in the Order refusing the application* a denial of the constitutional rights of the accused." (Emphasis added.)

Next the majority opinion made a fantastic claim that the exclusionary rule was constitutionally required, without offering any authority in support except for one case which did not even speak to the issue. The Opinion reads:

> "This Court has [since Weeks] required of federal law officers a strict adherance to [the exclusionary rule] which *this Court has held to be a clear, specific and constitutionally required*—even if judicially implied—deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to 'a form of words.' Holmes, J., Silverthorne Lumber Co.

v. United States. . . ." 367 U.S. 648. (Emphasis added.)

There is no authority whatsoever given for the announcement that the exclusionary rule is a "constitutionally required safeguard." It is true that the four words, "a form of words" are found in the *Silevrthorne* opinion but *Silverthorne* says nothing at all about a "clear, specific, and constitutionally required safeguard." On the contrary, in *Wolf v. Colorado, supra,* the Court held:

> "[The exclusionary rule] was not derived from the explicit requirements of the 4th Amendment; it was not based on legislation expressing congressional policy in the enforcement of the constitution. The decision was a matter of judicial implication." 338 U.S. at 28.

The statement from the *Mapp* opinion was not only unsupported by authority, it was also incorrect in its implications.

Next, the Majority Opinion in *Mapp* claims that the statement that "the exclusionary rule is of constitutional origin" remains entirely undistributed. 367 U.S. at 649. The Majority used *Olmstead v. United States, supra,* and *Wolf, supra,* as authority. But again the court takes passages from earlier opinions entirely out of context. *Wolf* did quote *Weeks* in saying that "the 4th Amendment barred the use of [illegally obtained evidence]," but then *Wolf* went on to say that *Weeks* was the first case to so hold and that the ruling was *not* required by the constitution or the legislature. Likewise, *Mapp* treats the *Olmstead* authority out of context, so that *Olmstead* appears to say exactly the reverse of what was actually said. *Mapp* says:

> "The Court, in Olmstead v. United States . . . in unmistakable language restated the Weeks rule: 'The striking outcome of the Weeks case and those which followed it was the sweeping declaration that the 4th Amendment, although not referring to or limiting the use of evidence in courts, really forbade its introduction if obtained by government officers through a violation of the Amendment [277 U.S. at p. 462.]' "

Granted, the above quote is an exact reproduction of the words of *Olmstead,* but it is apparent, even from the above language, that *Olmstead* was *not* in support of the exclusionary rule. The Majority (6-3) in *Olmstead* were against the exclusionary rule as is evidenced by other language from that opinion:

> "The common law rule is that the admissibility of evidence is not affected by the illegality of the means by which it was obtained." 277 U.S. at 467.
>
> "A standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore." *Id.* at 468.

It was the famous minority opinions in *Olmstead,* written by Holmes and Brandeis that supported the exclusionary doctrine.

In two other sections, the *Mapp* majority again makes statements which are either unjustifiable or completely lacking in authority. The main holding of the case, states:

> "We hold that all evidence obtained by searches and seizures in violation of the constitution is, by that same authority, inadmissible in a state court," 367 U.S. at 655.

There is, from the opinion itself, no justification for this extreme extension of power over the state court systems. As is pointed out by the minority opinion, the Supreme Court does not possess a general supervisory power over state courts (*Id.* at 678). Therefore, any requirement made by the Supreme Court over state courts would have to entail constitutional dimensions. And, as has been argued above, it is apparent that the exclusionary rule is *not* a requirement of the constitution. This fact is becoming increasingly more obvious in recent decisions. See *Terry v. Ohio, supra; United States v. Calandra, supra,* and *Michigan v. Tucker, supra.* Another claim which lacks authority and justification is the pronouncement that "the exclusionary doctrine [is] an essential part of the right to privacy." 367 U.S. at 656. Besides being unsupported by authority or logic, this statement is absurd, implying as it does that all people who enjoy the right to privacy also have criminal evidence to hide.

The dissenting opinion in the *Mapp* case evidenced better logic and reasoning:

> "Our concern here, as it was in Wolf, is not with the desirability of [the exclusionary] rule but only with the question whether the States are constitutionally free to follow it or not as they may themselves determine, and the relevance of the disparity of views among the States on this point lies simply in the fact that the judgment involved is a debatable one." 367 U.S. at 681.

> "I do not believe that the 14th Amendment empowers this Court to mould state remedies . . . to suit its own notions of how things should be done. . . ." 367 U.S. at 682.

> "I do not believe that this court is empowered to impose this much-debated procedure on local courts, however efficacious we may consider the Weeks rule to be. . . ." 637 U.S. at 683.

> "But in the last analysis I think this Court can increase respect for the Constitution only if it rigidly respects the limitations which the Constitution places upon it, and respects as well the principles inherit in its own process." 367 U.S. at 686.

Mr Justice Harlan concludes his dissenting opinion, in which Mr. Justice Frankfurter and Mr. Justice Whitaker join, by saying: "In the present case . . . our voice becomes only a voice of power, not of reason." (Citation omitted)

As is obvious from this examination of the *Weeks* and *Mapp* majority opinions, they are both based on faulty premises and poor logic and the exclusionary rule remains unjustified by them.

B. SINCE THERE IS NO EVIDENCE, AFTER SIXTY YEARS, THAT THE EX-

CLUSIONARY RULE HAS ACTUALLY DETERRED ILLEGAL POLICE CONDUCT, IT SHOULD BE ABOLISHED.

Several Supreme Court opinions since *Weeks* and *Mapp* have included comments on the exclusionary rule and its underlying purposes. For the past thirty years it has been widely recognized that the main purpose of the rule is to deter illegal police search and seizures by excluding any criminal evidence found during such a search. In *Wolf v. Colorado, supra,* there was one concurring opinion and two dissenting opinions. However, all nine justices agreed on one point, the exclusionary rule was designed to be a remedy against illegal searches and seizures by law enforcement officials, 338 U.S. at 31, 40-42. Eleven years later, in *Elkins v. United States, supra,* this Court held: "The [exclusionary] rule is calculated to prevent, not to repair. Its purpose is to deter. . . ." 364 U.S. at 217. Again, in *Mapp, supra,* the majority said that the exclusionary rule was a clear, specific, and constitutionally required *deterrent safeguard.* 367 U.S. at 648. (Emphasis added.) More recent cases also refer to the rule as a deterrent, *Terry v. Ohio, supra,* at 12, 13 and 29; *United States v. Calandra, supra,* at 347 and 348; and *Michigan v. Tucker, supra,* at 194.

The exclusionary rule may be "calculated to prevent," and its purpose may be to "deter" illegal police conduct but, if it does either one at all, it does so at a very high price to society. The question is, since the rule's purpose is to deter and since the price of the exclusionary rule is so high, is there sufficient evidence that the rule is performing its function? Utah's conclusion is no. After Sixty years there is no evidence that the exclusionary rule is effective as a preventative or deterrent measure against unconscionable police conduct. The Supreme Court, in *Irvine v. California,* 347 U.S. 128 (1954), said:

> "What actual experience teaches, we really do not know. Our cases evidence the fact that the federal rule of exclusion and our reversal of conviction for its violations are not sanctions which put an end to illegal search and seizure by federal officers. . . *There is no reliable evidence* known to us that inhibitants of those states which exclude the evidence suffer less from lawless searches and seizures than those of states that admit it." *Id.* at 135-7. (Emphasis added.)

Also, in *Elkins v. United States, supra,* it was admitted that empirical studies are not available to demonstrate any deterrent effect accomplished by the rule. 364 U.S. at 218. See also Oaks, *Studying the Exclusionary Rule in Search and Seizure,* Chicago L. R. 37:4, 1970, pp. 674-678.

Since the rule is not accomplishing the purpose for which it is used, and since the rule allows many criminals to go free, it is not reasonable nor necessary to continue the use of the exclusionary rule. Alternative approaches should be initiated.

C. THE EXCLUSIONARY RULE FAILS THE "BALANCING INTEREST TEST" AS SET FORTH IN THE *UNITED STATES V. CALANDRA* AND *MICHIGAN V. TUCKER* DECI-

SIONS AND THEREFORE SHOULD BE ABOLISHED.

In *United States v. Calandra, supra,* the Supreme Court describes the exclusionary rule by saying: ". . . . The rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect. . . ." 414 U.S. at 348. This Court then went on to say that the exclusionary rule does have limitations:

> ". . . the exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons. As with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." *Id.* at 348.

In other words, the Supreme Court felt that the exclusionary rule, as a remedy, should be used only in those areas where it could serve a useful purpose.

The court in *Calandra* was called to decide whether grand juries could conduct investigations based on evidence obtained from an unlawful search and seizure. The Court said:

> "In deciding whether to extend the exclusionary rule to grand jury proceedings, we must weigh the potential injury to the historic role and functions of the grand jury against the potential benefits of the rule as applied in this context."

Thus, a balancing test is used to determine if the exclu-

sionary rule is to be used. The injury caused by the rule is weighed against the potential benefits derived from the use of the rule.

In another 1974 case, *Michigan v. Tucker, supra,* the Supreme Court faced the question of whether the testimony of a witness must be excluded simply because his identity was learned when police questioned the defendant without giving him his full Miranda rights. In making their decision the Court again used a balancing test. The Court said:

> "For, *when balancing the interest involved,* we must weigh the strong interest under any system of justice of making available to the trier of fact all concededly relevant and trustworthy evidence which either party seeks to adduce. In this particular case we also 'must consider society's interest in the effective prosecution of criminals. . . . These interests may be outweighed by the need to provide an effective sanction to a constitutional right. . . . but they must in any event be valued." 41 L.Ed.2d at 196-197. (Emphasis added.)

The Court then held that society's interest in prosecuting criminals outweighed the potential benefits of using the exclusionary rule in that case, 41 L.Ed.2d at 197.

In the present case, the fact is, as pointed out above, that the "potential" benefit of the exclusionary rule has never been realized. On the other hand, no one can deny

that the injury caused by the rule is very real, allowing many criminals to escape punishment. Therefore, under the "balancing interest" test developed by the Supreme Court, the exclusionary rule fails and should be abolished.

POINT II

IF THE EXCLUSIONARY RULE IS NOT ABOLISHED, IT SHOULD BE LIMITED SO AS NOT TO EFFECT CASES WHERE IT WILL HAVE LITTLE OR NO DETERRENT EFFECT.

As discussed above, the purpose of the exclusionary rule is to deter unlawful police conduct during investigations in criminal cases. Since a criminal may go free every time the exclusionary rule is used, it seems only logical that the use of the rule should be limited to those situations where there is a very high possibility that it would have a definite deterrent effect. In the remaining cases, where the possibility of deterrence is low or non-existent use of the exclusionary rule should be discontinued. The Supreme Court recognized that there are instances where the exclusionary rule is ineffective. In *Terry v. Ohio, supra,* the Court said: "Moreover, in some contexts the rule is ineffective as a deterrent." 392 U.S. at 13. The Court felt that if the rule is used indiscriminately, serious harm would result:

> " . . . a rigid and unthinking application of the exclusionary rule, in futile protest against

> practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime."

In a very recent decision, the Court concluded that the exclusionary rule should not be used unless it is certain to be effective.

> "Before we penalize police error, therefore, we must consider whether the sanction serves a valid and useful purpose." *Michigan v. Tucker,* 41 L.Ed.2d at 194 (1974).

An example of a situation where the exclusionary rule is ineffective and therefore deterimental is when a police officer acts in good faith but still infringes on some right of a defendant. If the policeman was neither negligent nor malicious then he will feel, and rightly so, that he did the best he could. If the exclusionary rule then requires the suppression of the policeman's work product it will not work as a deterrent to future bad faith but also to future good faith. The frustration spoken of by the Court in *Terry v. Ohio* will be the sole result of the use of the rule. As the Court said in *Michigan v. Tucker*:

> "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in wilful, or at the very least, negligent conduct which has deprived the defendant of some right . . . Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force." 417 U.S. at 447.

It is respectfully urged that if the exclusionary rule is to be used at all, it only be used in those cases where the violation of a right was either intentional or extremely negligent.

POINT III

THE COURT OF APPEALS' DECISION SHOULD BE REVERSED SINCE THERE WILL BE NO DETERRENT EFFECT IN THIS CASE.

The search and seizure in this case happened five years ago. The legality of the empowering warrant was upheld until four years after the fact. It is completely futile to believe that Officers Pfitter and Swanson, who obtained the search warrant in good faith, will be deterred from doing exactly the same thing again. Besides, error, if any, was not committed by the two police officers. They submitted an affidavit and fully believed that the subsequently issued warrant was valid. Any error committed was by the municipal court judge who issued the warrant. If the Court of Appeals' decision is affirmed the police will be punished for a mistake they did not even make and society will be punished by having a murderer released in their midst. Use of the exclusionary rule in this case would be an exercise in futility. The Court of Appeals' decision should be reversed.

CONCLUSION

It is respectfully urged of this Court that the exclusionary rule be abolished, and if not abolished then limited to those cases where it will have a deterrent effect. The Court of Appeals' decision before this Court should be reversed since the exclusionary rule can accomplish nothing in this case.

Respectfully submitted.

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IN THE SUPREME COURT OF THE
UNITED STATES
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No. 74-1222

CHARLES L. WOLFF, JR., Warden,
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Appellant,

-vs-

DAVID L. RICE,

Appellee.

CERTIFICATE OF SERVICE

Pursuant to Rule 33 of the United States Supreme Court Rules, 28 U.S.C., the Attorney General of the State of Utah certifies that the following parties at each of the following addresses have been served with the required three copies of the Brief of the Attorney General of the State of Utah, Amicus Curiae: Mr. David L. Herzog, Attorney for Appellee, 1431 First National Center, Omaha, Nebraska 68102; and Mr. Paul L. Douglas, Attorney General of Nebraska, State Capitol, Lincoln, Nebraska 68509; by depositing same in the United States Mail, postage prepaid, this 13th day of August, 1975.

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